

The Cinematograph Act, 1952

February 20, 2013

Chapter I – PRELIMINARY

1. Shot title, extent and commencement. –

ACT NO. 37 OF 1952 1* [21st March, 1952.]

An Act to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs. Be it enacted by Parliament as follows:-

(1) This Act may be called the Cinematograph Act, 1952.

(2) Parts I, II and IV extends to the whole of India ¹[***] and Part III extends to ²[the Union territories] only.

(3) This Act shall come into force on such date³ as the Central Government may, by notification in the Official Gazette, appoint:

⁴[Provided that Parts I and II shall come into force in the State of Jammu and Kashmir only on such date after the commencement of the Cinematograph (Amendment) Act, 1973 (26 of 1973), as the Central Government may, by notification in the Official Gazette, appoint.]

1. The words "except the State of Jammu and Kashmir" omitted by Act 25 of 1973, sec. 2 (w.e.f. 28-5-1973).

2. Subs. by Act 3 of 1959, sec. 2, for "Part C States" (w.e.f. 12-3-1959).

3. Came into force on 28-7-1952, vide S.R.O. 1066, dated the 10th June, 1952, published in the Gazette of India, 1952, Pt. II, Sec. 3, p. 945.

4. The proviso added by Act 25 of 1973, sec. 2 (w.e.f. 28-5-1973).

2. Definitions –

In this Act, unless the context other wise requires,-

(a) "adult" means a person who has completed his eighteenth year;

¹[(b) "Board" means the Board of Film Certification constituted by the Central Government under section 3;]

²[(bb) "certificate" means the certificate granted by the Board under section 5A;]

(c) "cinematograph" includes any apparatus for the representation of moving pictures or series of pictures;

(d) "district magistrate", in relation to a presidency-town, means the Commissioner of police;

³[(dd) "film" means a cinematograph film;]

(e) "place" includes a house, building, tent and any description of transport, whether by sea, land or air;

(f) "prescribed" means prescribed by rules made under this Act;

⁴[(g) "regional officer" means a regional officer appointed by the Central Government under section 5 and includes an additional regional officer and an assistant regional officer;

(h) "Tribunal" means the Appellate Tribunal constituted under section 5D.]

COMMENTS

(i) The definition of the expression "Cinematograph" includes VCR/VCP/TV Projector as the said equipments achieve/serve the same purpose as the traditional media for exhibition of moving pictures. It must be so interpreted to take into account new and subsequent scientific developments in the field as it cannot be confined to traditional interpretation of such apparatus or simply compartmentalised. Hence, licence is necessary to carry on business of running a video parlour; *Samrat Video Parlour v. State of Haryana*, AIR 1993 SC 2328.

(ii) Even if the screen is separate and not inbuilt in the television set, exhibition of films through VCR/VCP/TV Projector is permissible to only a 'licensee' carrying on the business of running such video parlour; *Regal Video v. State of Haryana*, AIR 1993 SC 2372.

(iii) It is settled view that video tapes come within the expression 'Cinematograph' in view of the extended definition in section 2(c) which includes apparatus for the re-presentation of moving pictures or series of pictures as copy of the video should be created in respect of a cinematograph under the Act; *State of Andhra Pradesh v. Nagoti Venkataramana*, 1996 PTR 179.

1. Subs. by Act 49 of 1981, sec. 2, for clause (b) (w.e.f. 1-6-1983).

2. Ins. by Act 49 of 1981, sec. 2 (w.e.f. 1-6-1983).

3. Ins. by Act 3 of 1959, sec. 3 (w.e.f. 12-3-1959).

4. Ins. by Act 49 of 1981, sec. 2 (w.e.f. 1-6-1983).

2-A. Construction of reference to any law not in force or any functionary not in existence in the State of Jammu and Kashmir-

Any reference in this Act to any law which is not in force, or any functionary not in existence, in the state of Jammu and Kashmir, shall, in relation to that Stat, be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that State.

1. Ins. by Act 25 of 1973, sec. 3 (w.e.f. 28-5-1973).

Chapter II – CERTIFICATION OF FILMS FOR PUBLIC EXHIBITION

3. Board of Film Censors –

¹3. Board of Film Censors

(1) For the purpose of sanctioning films for public exhibition, the Central Government may, by notification in the official Gazette, constitute a Board to be called the ²[Board of Film Certification which shall consist of a Chairman and ³not less than twelve and not more than twenty five] other members appointed by the Central Government.

(2) The Chairman of the Board shall receive such salary and allowance as may be determined by the Central Government, and the other members shall receive such allowances or fees for attending the meetings of the Board as may be prescribed.

(3) The other terms and conditions of service of the members of the Board shall be such as may be prescribed

1. Section 3, 4, 5, 5A, 5B, 5C and 6 subs. by Act 3 of 1959, sec. 4, for sections 3, 4, 5 and 6 (w.e.f. 12-3-1959).

2. Subs. by Act 49 of 1981, sec. 3, for "Board of Film Censors" (w.e.f. 1-6-1983)

3. Subs. by Act 49 of 1981, sec. 3, for "not more than nine" (w.e.f. 1-6-1983).

4. Examination of films –

¹[4. Examination of films.—(1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner,—

(i) sanction the film for unrestricted public exhibition:²[***]

³[Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or]

(ii) sanction the film for public exhibition restricted to adults; or

⁴[(iia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or]

⁵[(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or]

(iv) refuse to sanction the film for public exhibition.

(2) No action under ⁶[the proviso to clause (i), clause (ii), clause (iia), clause (iii) or clause (iv)] of sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter.]

1. Section 3, 4, 5, 5A, 5B, 5C and 6 subs. by Act 3 of 1959, sec. 4, for sections 3, 4, 5 and 6 (w.e.f. 12-3-1959).

2. The word "or" omitted by Act 49 of 1981, sec. 4 (w.e.f. 1-6-1983).

3. The proviso added by Act 49 of 1981, sec. 4 (w.e.f. 1-6-1983).

4. Ins. by Act 49 of 1981, sec. 4 (w.e.f. 1-6-1983).

5. Subs. by Act 49 of 1981, sec. 4, for clause (iii) (w.e.f. 1-6-1983).

6. Subs. by Act 49 of 1981, sec. 4, for "clause (ii), clause (iii) or clause (iv)" (w.e.f. 1-6-1983).

5. ADVISORY PANELS-. –

¹5.ADVISORY PANELS-(1) For the purpose of enabling the Board of efficiently discharge its functions under this Act, the Central Government may establish at such regional centers as it thinks fit, advisory panels each of which shall consist of such number of persons being persons qualified in the opinion of the Central Government may think fit to appoint thereto.

(2) At each regional center there shall be as many regional officers as the Central Government may think fit to appoint and rule made in this behalf may provide for the association of regional officers in the examination of films.

(3) The Board may consult in such manner as may be prescribed any advisory panel in respect of any film for which an application for a certificate has been made.

(4) It shall be the duty of every such advisory panel whether acting as a body or in committees as may be provided in the rules made in this behalf to examine the film and to make such recommendations to the Board as it thinks fit.

(5) The members of the advisory panel shall not be entitled to any salary but shall receive such fees or allowances as may be prescribed.

1. Section 3, 4, 5, 5A, 5B, 5C and 6 subs. by Act 3 of 1959, sec. 4, for sections 3, 4, 5 and 6 (w.e.f. 12-3-1959).

5-A. CERTIFICATION OF FILMS. –

¹[5A. Certification of films.—²[(1) If, after examining a film or having it examined in the prescribed manner, the Board considers that—

(a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (i) of sub-section (1) of section 4, it shall grant to the person applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate; or

(b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members

of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or, as the case may be, a "S" certificate.

and cause the film to be so marked in the prescribed manner:

Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b).]

(2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout India for a period of ten years.]

COMMENTS

(i) Mere grant of certification to other films, which have more or similar obscene or pornographic scenes could not automatically entitle a producer of film to a certification under section 5A; Ms. A. Arulmozhi v. Government of India, AIR 2006 Mad 49.

(ii) The particular film must conform to the requirements of law so as to be entitled to a certification. It is irrelevant if other films granted certification have more or similar obscene or pornographic scenes or events. The producer of such film is not entitled to avail the protection under Article 14 of the Constitution of India; B.K. Adarsh v. Union of India, AIR 1990 AP 100.

(iii) Contemporary and moral standards as well as the effect on viewer, especially young and adolescent are the relevant factors, in determination of obscenity for the purposes of this Act; B.K. Adarsh v. Union of India, AIR 1990 AP 100.

(iv) A film has to cater to the tastes of different kinds of people and thus, different topics are covered, before the film ends. Therefore, the ultimate reaction when the film ends and whether it offends any strata of the society are the two crucial factors considered in determination of certification thereof; P.Jagajeevan Ram v. Government of India, AIR 1989 Mad 149.

(v) Where in a film, there were repeated assertions of the heroine whose father procured a false caste certificate for her to gain advantages of reservation and of her father to the effect that Constitution of India led both of them to cheat and impersonate and advocates framers of reservation policy should be punished, instead of punishing the father-daughter duo, the main thrust was to project to the public at large that the reservation policy itself was retrograde making it framers punishable. It certainly, amounted to contravention of the provisions of this Act as it was a grave provocation to gullible and rural masses to take law in their hands and punish the framers of the Constitution; P. Jagajeevan Ram v. Government of India, AIR 1989 Mad, 149.

1. Section 3, 4, 5, 5A, 5B, 5C and 6 subs. by Act 3 of 1959, sec. 4, for sections 3, 4, 5 and 6 (w.e.f. 12-3-1959).

2. Subs. by Act 49 of 1981, sec. 5, for sub-section (1) (w.e.f. 1-6-1983)

5-B. PRICIPLES FOR GUIDANCE IN CERTIFYING FILMS. –

¹[5B. Principles for guidance in certifying films.—(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of

²[the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.]

COMMENTS

(i) The court exercising writ jurisdiction would not ordinarily substitute its view for the view of an expert. But where the decision of the Central Board of Film Certification entrenches upon the fundamental right to the freedom of speech and expression, it is not merely the function but the duty and responsibility of the court to intervene; *F.A. Picture International v. Central Board of Film Certification*, AIR 2005 Bom 145.

(ii) Videograph is controlled by the provisions of this Act. An interview and videograph of condemned prisoners is also subject to issuance of license under this section of the Act; *M.Hasan v. Government of Andhra Pradesh*; AIR 1998 AP 35.

(iii) The film "Bandit Queen" dealt with the life of a village female child transformed to a dreaded dacoit due to social evil and brutalities, to which was subjected. Scenes of nudity and rape therein and use of expletive were permitted being in aid of them. Held, scenes were intended not to arouse prurient or lascivious thoughts but a sense of revulsion against perpetrators and pity for victim. Hence, grant of 'A' certificate subject to certain conditions, was in compliance with the requisite guidelines; *Bobby Art International v. Om Pal Singh Hoon*, AIR 1996 SC 1846.

(iv) Where an application for grant of censorship certificate is made before an authority concerned, a duty is cast upon the latter to pass such orders as may be appropriate, and expeditiously. The court is not competent to state whether the film can be released for public exhibition or not in the absence of any order passed by such authority concerned, or otherwise interfere with or step into the shoes of such authority concerned. However, the court exercised its power to direct the authority concerned to pass orders within the time specified by the court; *R.K. Star Productions v. Union of India*, AIR 1995 Mad 4.

(v) If the authority concerned refuses to grant the censor certificate or impose restrictions, the onus lies heavily on it to justify the decision with reasons for such refusal or restrictions, if such decision adversely affects the fundamental right granted under Article 19(1)(a) of the Constitution; *Union of India v. Cinemart Foundation*, AIR 1993 SC 171.

(vi) A scene where the heroine justifies the crime of procurement of false caste certificate holds the reservation policy as retrograde and even suggests punishment of framers of Constitution instead of those committing such crime, it amounted to infringement of the guidelines framed for the purpose of this Act; *P. Jagajeevan Ram v. Government of India*, AIR 1989 Mad 149.

(vii) The bodily movement suggestive of the girl (heroine) being touched at various erotic points of her body in an unusual scene where the same heroine is being sexually assaulted by an unsatisfied invisible spirit/soul, amount to vulgar display of sheer eroticism thereby violating the prohibitions contained in the guidelines issued by the Central Government under sub-section (2) of section 5B; *Ramanlal Lalbhai Desai v. Central Board of Film Certification, Bombay*, AIR 1988 Bom 278.

(viii) Prolonged and unduly long exposure of the nude body of the heroine in three rape and one attempted rape scenes, and also during the intimate love-making scene with the hero, without any relevance to the elements of the film's story at various intervals, blatantly violates the guidelines issued by the Central Government under sub-section (2) of section 5B; Ramanlal Lalbhai Desai v. Central Board of Film Certification, Bombay, AIR 1988 Bom 278.

(ix) Mere display of pictures and sculptures (in the bedroom) which are not otherwise banned does not amount to obscenity or in any way, cater to the lascivious taste of prurient; Ramanlal Lalbhai Desai v. Central Board of Film Certification, Bombay, AIR 1988 Bom 278.

(x) Neither the immolation by sati is in any way the same thing as the glorification of sati nor are the supernatural/superstitious elements in the film unconventional, insensitive and irresponsible to the values and standards of the society to warrant refusal of certificate; Ramanlal Lalbhai Desai v. Central Board of Film Certification, Bombay, AIR 1988 Bom 278.

1. Section 3, 4, 5, 5A, 5B, 5C and 6 subs. by Act 3 of 1959, sec. 4, for sections 3, 4, 5 and 6 (w.e.f. 12-3-1959).

2. Ins. by Act 49 of 1981, sec. 6 (w.e.f. 1-6-1983).

5-C. APPEALS. – . –

¹[²5-C. APPEALS. –(1) Any person applying for a certificate in respect of a film who is aggrieved by any order of the Board –

(a) Refusing to grant a certificate ; or

(b) Granting only an "A" certificate ; or

(c) Granting only a "S" certificate ; or

(d) Granting only a "UA" certificate ; or

(e) Directing the applicant to carry out any excisions or modifications, may, within thirty days from the date of such order, prefer an appeal to the Tribunal :

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the aforesaid period of thirty days, allow such appeal to be admitted within a further period of thirty days.

(2) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fees, not exceeding rupees one thousand, as may be prescribed.

1. Section 3, 4, 5, 5A, 5B, 5C and 6 subs. by Act 3 of 1959, sec. 4, for sections 3, 4, 5 and 6 (w.e.f. 12-3-1959).

2. Subs. by Act 49 of 1981, sec. 7, for section 5C (w.e.f. 1-6-1983).

5-D. CONSTITUTION OF APPELLATE TRIBUNAL. –

¹5-D. CONSTITUTION OF APPELLATE TRIBUNAL.(1) For the purpose of hearing appeals against any order of the Board under Section 5-C, the Central Government shall, by notification in the Official Gazette, constitute an Appellate Tribunal.

(2) The head office of the Tribunal shall be at New Delhi or at such other place as the Central Government may, by notification in the Official Gazette, specify.

(3) Such Tribunal shall consist of a Chairman and not more than four other members appointed by the Central Government.

(4) A person shall not be qualified for appointment as the Chairman of the Tribunal unless he is a retired Judge of a High Court, or is a person who is qualified to be a Judge of a High Court.

(5) The Central Government may appoint such persons who, in its opinion, are qualified to judge the effect of films on the public, to be members of the Tribunal.

(6) The Chairman of the Tribunal shall receive such salary and allowances as may be determined by the Central Government and the members shall receive such allowances or fees as may be prescribed.

(7) Subject to such rules as may be made in this behalf, the Central Government may appoint a Secretary and such other employees as it may think necessary for the efficient performance of the functions of the Tribunal under this Act.

(8) The Secretary to, and other employees of, the Tribunal shall exercise such powers and perform such duties as may be prescribed after consultation with the Chairman of the Tribunal.

(9) The other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of, the Tribunal shall be such as may be prescribed.

(10) Subject to the provisions of this Act, the Tribunal may regulate its own procedure.

(11) The Tribunal may, after making such inquiry into the matter as it

considers necessary, and after giving the appellant and the Board an opportunity of being heard in the matter, make such order in relation to a film as it thinks fit and the Board shall dispose of the matter in conformity with such order.

1. Ins. by Act 49 of 1981, sec. 8 (w.e.f. 1-6-1983).

5E-Suspension and revocation of certificate.—

¹5E-Suspension and revocation of certificate.

Suspension and revocation of certificate- (1) Notwithstanding anything contained in sub section (2) of Section 6, the Central Government may, by notification in the Official Gazette, suspend a certificate granted under this Part, for such period as it thinks fit or may revoke such certificate if it is satisfied that-

(i) The film in respect of which the certificate was granted, was being exhibited in a form other than the one in which it was certified , or

(ii) The film or any part thereof it being exhibited in contravention of the provisions of this part rules made there under.

(2) Where a notification under sub-section (1) has been published, the Central Government may require the applicant for certificate or any other person to whom the rights in the film have passed, or both, to deliver up the certificate and all duplicate certificates, if any, granted in respect of the film to the Board or to any person or authority specified in the said notification.

(3) No action under this section shall be taken except after giving an opportunity to the person concerned for representing his views in the matter.

(4) During the period in which a certificate remains suspended under this section, the film shall be deemed to be an uncertified film.

1. Ins. by Act 49 of 1981, sec. 8 (w.e.f. 1-6-1983).

5-F. REVIEW OF ORDERS BY CENTRAL GOVERNMENT. –

(1) Where an applicant for a certificate or any other person to whom the rights in the film have passed, is aggrieved by any order of the Central Government under Section 5-E, he may, within sixty days of the date of publication of the notification in the Official Gazette, make an application to the Central Government for review of the order, setting out in such application the grounds on which he considers such review to be necessary:

Provided that the Central Government may, if it is satisfied that the applicant for a certificate or that other person was prevented by sufficient cause from filing an application for review within the aforesaid period of sixty days, allow such application to be filed within a further period of sixty days.

(2) On receipt of the application under sub-section (1), the Central Government may, after giving the aggrieved person a reasonable opportunity of being heard, and after making such further inquiry, as it may consider necessary, pass such order as it thinks fit, confirming, modifying or reversing its decision and the Board shall dispose of the matter in conformity with such order.

1. Ins. by Act 49 of 1981, sec. 8 (w.e.f. 1-6-1983).

6. Revisional powers of the Central Government –

¹[6. Revisional powers of the Central Government.—(1) Notwithstanding anything contained in this Part, the Central Government ²[may, of its own motion, at any stage,] call for the record of any proceeding in relation to any film which is pending before, or has been decided by, the Board, ³[or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal)] and after such inquiry, into the matter as it considers necessary, make such order in relation thereto as it thinks fit, and the Board shall dispose of the matter in conformity with such order:

Provided that no such order shall be made prejudicially affecting any person applying for a certificate or to whom a certificate has been granted, as the case may be, except after giving him an opportunity for representing his views in the matter:

³[Provided further that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against public interest to disclose.]

(2) Without prejudice to the powers conferred on it under sub-section (1), the Central Government may, by notification in the Official Gazette, direct that—

(a) a film which has been granted a certificate shall be deemed to be an uncertified film in the whole or any part of India; or

(b) a film which has been granted a "U" certificate ³[or a "UA" certificate or a "S" certificate] shall be deemed to be a film in respect of which an "A" certificate has been granted; or

⁴[(c) the exhibition of any film be suspended for such period as may be specified in the direction:]

⁵[Provided that no direction issued under clause (c) shall remain in force for more than two months from the date of the notification.]

(3) No action shall be taken under clause (a) or clause (b) of sub-section (2) except after giving an opportunity to the person concerned for representing his views in the matter.

(4) During the period in which a film remains suspended under clause (c) of sub-section (2), the film shall be deemed to be an uncertified film.]

COMMENTS

The Legislature may, in certain cases overrule or nullify the judicial or executive decision by enacting an appropriate legislation. The executive cannot sit in an appeal or review or revise a judicial order; Union of India v. K.M. Shankarappa, AIR 2000 SC 3678.

1. Section 3, 4, 5, 5A, 5B, 5C and 6 subs. by Act 3 of 1959, sec. 4, for sections 3, 4, 5 and 6 (w.e.f. 12-3-1959).

2. Subs. by Act 49 of 1981, sec. 9, for "may at any stage" (w.e.f. 1-6-1983).

3. Ins. by Act 49 of 1981, sec. 9 (w.e.f. 1-6-1983).

4. Ins. by Act 19 of 1953, sec. 2 (w.e.f. 16-5-1953).

5. Subs. by Act 19 of 1953, sec. 2, for the proviso (w.e.f. 16-5-1953).

6-A.-Information and documents to be given to distributors and exhibitors with respect to certified films.

¹ 6-A.-Information and documents to be given to distributors and exhibitors with respect to certified films. Information and documents to be given to distributors and exhibitors with respect to certified films – Any person who delivers any certified film to any distributor or exhibitor shall, in such manner as may be prescribed, notify to the distributor or exhibitor, as the case may be,

the title, the length of the film, the number and the nature of the certificate granted in respect thereof and the conditions, if any, subject to which it has been so granted, and any other particulars respecting the film which may be prescribed.

²[***]

1. Ins. by Act 19 of 1953, sec. 3 (w.e.f. 16-5-1953).

2. Section 6B omitted by Act 56 of 1984, sec. 2 (w.e.f. 27-8-1984) Earlier section 6B was inserted by Act 49 of 1981, sec. 10 (w.e.f. 1-6-1983).

7. Penalties for contraventions of this Part –

¹[(1) If any person—

(a) exhibits or permits to be exhibited in any place—

(i) any film other than a film which has been certified by the board as suitable for unrestricted public exhibition or for public exhibition restricted to adults ²[or to members of any profession or any class of persons] and which, when exhibited, displays the prescribed mark of the Board and has not been altered or tampered with in any way since such mark was affixed thereto,

(ii) any film, which has been certified by the Board as suitable for public exhibition restricted to adults, to any person who is not an adult, ³[***].

²[(iia) any film which has been certified by the Board as suitable for public exhibition restricted to any profession or class of persons, to a person who is not a member of such profession or who is not a member of such class, or]

(b) without lawful authority (the burden of proving which shall be on him), alters or tampers with in any way any film after it has been certified, or

(c) fails to comply with the provision contained in section 6A or with any order made by the Central Government or by the Board in the exercise of any of the powers or functions conferred on it by this Act or the rules made thereunder,

⁴⁵[he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees, or with both, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided that a person who exhibits or permits to be exhibited in any place a video film in contravention of the provisions of sub-clause (i) of clause (a) shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to three years and with fine which shall not be less than twenty thousand rupees, but which may extend to one lakh rupees, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided further that a court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months, or a fine of less than twenty thousand rupees]]:

⁶[Provided further that] notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf,

to pass a sentence of fine exceeding five thousand rupees on any person convicted of any offence punishable under this Part:

⁷[Provided also] that no distributor or exhibitor or owner or employee of a cinema house shall be liable to punishment for contravention of any condition of endorsement of caution on a film certified as "UA" under this Part.]

(2) If any person is convicted of an offence punishable under this section committed by him in respect of any film, the convicting court may further direct that the film shall be forfeited to the Government.

(3) The exhibition of a film, in respect of which an "A" certificate ⁸[or a "S" certificate or a "UA" certificate] has been granted, to children below the age of three years accompanying their parents or guardians shall not be deemed to be an offence within the meaning of this section.

1. Subs. by Act 19 of 1953, sec. 4, for sub-section (1) (w.e.f. 16-5-1953).

2. Ins. by Act 49 of 1981, sec. 11 (w.e.f. 1-6-1983).

3. The word "or" omitted by Act 49 of 1981, sec. 11 (w.e.f. 1-6-1983).

4. Subs. by Act 49 of 1981, sec. 11, for certain words (w.e.f. 1-6-1983).

5. Subs. by Act 56 of 1984, sec. 3, for certain words (w.e.f. 27-8-1984).

6. Subs. by Act 56 of 1984, sec. 3, for "Provided that" (w.e.f. 27-8-1984).

7. Subs. by Act 56 of 1984, sec. 3, for "Provided further" (w.e.f. 27-8-1984).

8. Ins. by Act 49 of 1981, sec. 11 (w.e.f. 1-6-1983).

7-A. Power of seizure-

¹[7A. Power of seizure.—(1) Where a film in respect of which no certificate has been granted under this Act is exhibited, or a film certified as suitable for public exhibition restricted to adults is exhibited to any person who is not an adult or a film is exhibited in contravention of any of the other provisions contained in this Act or of any order made by the Central Government ²[the Tribunal] or the Board in the exercise of any of the powers conferred on it, any police officer may, ³[***] enter any place in which he has reason to believe that the film has been or is being or is likely to be exhibited, search it and seize the film.

(2) All searches under this Act shall be carried out in accordance with the provisions of the ⁴[Code of Criminal Procedure, 1973 (2 of 1974)], relating to searches.

1. Ins. by Act 3 of 1959, sec. 5 (w.e.f. 12-3-1959).

2. Ins. by Act 49 of 1981, sec. 12 (w.e.f. 1-6-1983).

3. Certain word omitted by Act 49 of 1981, sec. 12 (w.e.f. 1-6-1983).

4. Subs. by Act 49 of 1981, sec. 12, for "Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 1-6-1983).

7-B. Delegation of powers by Board [(Note:- Original S. 7-B, renumbered as sub-section –

¹[7B. Delegation of powers by Board.—²[(1)] The Central Government may, by general or special order, direct that any power, authority or jurisdiction exercisable by the Board under this Act shall, ³[in relation to the certification of the films under this Part] and subject to such condition, if any, as may be specified in the order, be exercisable also by the Chairman or any other member of the Board, and anything done or action taken by the Chairman or other member specified in the order shall be deemed to be a thing done or action taken by the Board.]

⁴[(2) The Central Government may, by order and subject to such conditions and restrictions as may be prescribed, authorise the regional officer to issue provisional certificates.]

1. Ins. by Act 3 of 1959, sec. 5 (w.e.f. 12-3-1959).

2. Section 7 renumbered as sub-section (1) thereof by Act 49 of 1981, sec. 13 (w.e.f. 1-6-1983).

3. Subs. by Act 49 of 1981, sec. 13, for "in relation to such matters" (w.e.f. 1-6-1983).

4. Ins. by Act 49 of 1981, sec. 13 (w.e.f. 1-6-1983).

7-C . Power to direct exhibition of films for examination.

¹ Power to direct exhibition of films for examination – For the purpose of exercising any of the powers conferred on it by this Act, the Central Government,² the Tribunal or the Board may require any film to be exhibited before it or before ³ any persons or authority (Note:- Subs. by Act 49 of 1981 specified by it in this behalf.

1. Ins. by Act 3 of 1959, sec. 5 (w.e.f. 12-3-1959).

2. Ins. by Act 49 of 1981, sec. 14 (w.e.f. 1-6-1983).

3. Subs. by Act 49 of 1981, sec. 14, for "any person" (w.e.f. 1-6-1983).

7-D.Vacancies, etc., not to invalidate proceeding.

¹ Vacancies, etc., not to invalidate proceeding – No act or proceeding of ²[the Tribuna the Board or of any advisory panel shall be deemed to be invalid by reason only of a vacancy in, or any defect in the constitution of [the Tribuna (Note:- Ins. by ibid)] the Board or panel, as the case may be.

1. Ins. by Act 3 of 1959, sec. 5 (w.e.f. 12-3-1959).

2. Ins. by Act 49 of 1981, sec. 15 (w.e.f. 1-6-1983).

7-E.Members of the Board and advisory panels, to be public servants.

¹ Members of the Board and advisory panels to be public servants – All members of ²the [the Tribunal, the Board and of any advisory panel shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

1. Ins. by Act 3 of 1959, sec. 5 (w.e.f. 12-3-1959).

2. Ins. by Act 49 of 1981, sec. 16 (w.e.f. 1-6-1983).

7-F.Bar of legal proceedings.

¹7-F.Bar of legal proceedings.Bar of legal proceedings –

No suit or other legal proceeding shall lie against ²the Central Government, [the Tribunal, the Board, advisory panel or any officer or member of ³the Central Government, the Tribunal, the Board or advisory panel, as the case may be, in respect of anything which is in good faith done or intended to be done under this Act.]

1. Ins. by Act 3 of 1959, sec. 5 (w.e.f. 12-3-1959).

2. Subs. by Act 49 of 1981, sec. 17, for "the Central Government, the Board" (w.e.f. 1-6-1983).

3. Subs. by Act 49 of 1981, sec. 17, for "the Central Government, the Board or" (w.e.f. 1-6-1983).

8. Power to make rules – .

(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Part.

¹(2) [(Note:- Subs. by Act 49 of 1981 (w.e.f. 1-6-1983) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for-

(a) The allowance or fees payable to the members of the Board.

(b) The terms and conditions of service of the members of the Board.

(c) The manner of making an application to the Board for a certificate and the manner in which a film has to be examined by the Board and the fees to be levied therefore.

(d) The association of regional officers in the examination of films, the conditions and restrictions subject to which regional officers may be authorised under Section 7-B to issue provisional certificates and the period of validity of such certificates.

- (e) The manner in which the Board may consult any advisory panel in respect of any film.
- (f) The allowance or fees payable to the members of advisory panel
- (g) The marking of the films
- (h) The allowances or fees payable to the members of the Tribunal
- (i) The powers and duties of the Secretary to, and other employee of, the Tribunal.
- (j) The other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of, the Tribunal
- (k) The fees payable by the appellant to the Tribunal in respect of an appeal;
- (l) The conditions (including conditions relating to the length of films in general or any class of films, in particular) subject to which any certificate may be granted, or the circumstances in which any certificate shall be refused.
- (m) Any other matter which is required to be or may be prescribed.]

²(3) Every rule made by the Central Government under this Part shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

1. Subs. by Act 49 of 1981, sec. 18, for sub-section (2) (w.e.f. 1-6-1983).

2. Subs. by Act 25 of 1973, sec. 4, for sub-section (3) (w.e.f. 28-5-1973).

9. Power to exempt -

The Central Government may, by order in writing exempt, subject to such conditions and restrictions, if any, as it may impose, the exhibition of any film or class of films from any of the provisions of this Part or of any rules made there under.

1. For such general exemption, see Gazette of India, 1952, Pt. II, Sec. 3, pp. 1578-1581.

Chapter III – REGULATION OF EXHIBITIONS BY MEANS OF CINEMATOGRAPHS

10. Cinematograph exhibitions to be licensed –

Save as otherwise provided in this Part, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Part or otherwise than in compliance with any conditions and restrictions imposed by such licences.

11. Licensing authority –

The authority having power to grant licences under this Part (hereinafter referred to as the licensing authority) shall be the district magistrate.

Provided that the State Government may, by notification in the Official Gazette, constitute, for the whole or any part of a ¹ Union territory], such other authority as it may specify in the notification to be the licensing authority for the purposes of this Part.

1. Subs. by Act 58 of 1960, sec. 3 and Sch. II, for "Part C State" (w.e.f. 26-12-1960).

12. Restrictions on powers of licensing authority –

(1) The licensing authority shall not grant a licence under this Part, unless it is satisfied that-

(a) The rules made under this Part have been substantially complied with, and

(b) Adequate precautions have been taken in the place, in respect of which the licence is to be given, to provide for the safety of persons attending exhibitions therein.

(2) Subject to the foregoing provisions of this section and to the control of the State Government, the licensing authority may grant licence under this Part to such persons as that authority thinks fit on such terms and conditions and subject to such restrictions as it may determine.

(3) Any person aggrieved by the decision of a licensing authority refusing to grant a licence under this Part may, within such time as may be prescribed, appeal to the State Government or to such officer as the State Government may specify in this behalf and the State Government or the officer, as the case may be, may make such order in the case as it or he thinks fit.

(4) The Central Government may, from time to time, issue directions to licensees generally or to any licensee in particular for the purpose of regulating the exhibition of any film or class of films, so that scientific films, films intended for educational purposes, films dealing with news and current events, documentary films or indigenous films secure and adequate opportunity of being exhibited, and where any such directions have been issued those directions shall be deemed to be additional conditions and restrictions subject to which the licence has been granted.

Notes

The expression "may" used in sub section (2) cannot be read as "shall" *Tajdin Facerbhai v. Union Territory of Goa*, AIR 1965 Goa 158.

If the licensing authority does not surrender its own judgement to the Government it is entitled in law to give weight to the opinion of the Government. *Tajdin Facerbhai v. Union Territory of Goa*, AIR 1965 Goa 158.

Where the appellant authority without passing any written order directed the District Magistrate to inform the petitioner that it was not possible to grant the licence as various directions were found

under Cinematograph Rules, the order was fit to be set aside and a direction was given to the Government to dispose of the appeal as per law. *Tajdin Facerbhai v. Union Territory of Goa*, AIR 1971 Goa 27.

The final order which the appellate passes in appeal is a quasi-judicial order. When it is a quasi-judicial order it must be a speaking order. Reasons must be given by the appellate authority for allowing or dismissing the appeal. *Tajdin Facerbhai v. Union Territory of Goa*, AIR 1971 Goa 27.

During the pendency of an application under sub section (3) of Section 12 a writ petition is maintainable. *Tajdin Facerbhai v. Union Territory of Goa*, AIR 1967 Goa 158.

13. Power of Central Government or local authority to suspend exhibition of films in certain cases –

(1) The Lieutenant- Governor or, as the case may be, the Chief Commissioner, in respect of the ¹ whole or any part of a Union territory], and the district magistrate in respect of the district within his jurisdiction, any, if he is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace, by order, suspend the exhibition of the film and during such suspension the film shall be deemed to be an uncertified film in the State, part or district, as the case may be.

(2) Where an order under sub section 91) has been issued by the Chief Commissioner or a district magistrate, as the case may be a copy thereof, together with a statement of reasons therefore, shall forthwith be forwarded by the person making the same to the Central Government, and the Central Government may either confirm or discharge the order.

(3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Central Government may, if it is of opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit.

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1. Subs. by Act 58 of 1960, sec. 3 and Sch. II, for "whole Part C State or any part thereof" (w.e.f. 26-12-1960).

14. Penalties for contravention of this Part –

If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if he owner or occupier of any place permits that place to be used in contravention of the provision of this Part or of the rules made there under, or of the condition and restrictions upon or subject to which any licence has been granted under this Part, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

15. Power to revoke licence –

Where the holder of a licence has been convicted of an offence under Section 7 or Section 14, the licence may be revoked by the licensing authority.

16. Power to make rules – –

¹(1)] The Central Government may, by notification in the Official Gazette, make rules-

(a) Prescribing the terms, conditions and restrictions, if any, subject to which licences may be granted under this part.

(b) Providing for the regulation of cinematograph exhibitions for securing the public safety.

(c) Prescribing the time within which and the conditions subject to which an appeal under sub section (3) of Section 12 may be preferred.

²(2) Every rule made by the Central Government under this Part shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree that the rule should be made, the rule shall thereafter have effect only in such modified form or be of no effect, the case maybe, so, however, that any such modification or annulment shall be without prejudice the validity of anything previously done under that rule.

1. Section 11 renumbered as sub-section (1) thereof by Act 49 of 1981, sec. 19 (w.e.f. 1-6-1983).

2. Ins. by Act 49 of 1981, sec. 19 (w.e.f. 1-6-1983).

17. Power to exempt –

The Central Government may by order in writing exempt,¹ subject to such conditions and restrictions as it may impose, any cinematograph exhibition or class or cinematograph exhibitions from any of the provisions of this part or of any rules made there under.

Notes

As the expression Central Government in relation to anything done before the constitution means the Governor-General or Governor-General in Council, it is obvious that the Notification of 1942 issued by the Chief Commissioner of Delhi under Section 9 of Cinematograph Act, 1918 must be deemed to have been issued by the Central Government. It cannot be said to be inconsistent with the Act of 1952.

1. For such general exemptions, see Gazette of India, 1954, Pt. II, Sec. 3, p. 240, Gazette of India, 1955, Pt. II, Sec. 3, p. 310.

Chapter IV – REPEAL

18. Repeal –

The cinematograph Act, 1918 (2 of 1918), is hereby repealed.

Provided that in relation to part A states and Part B states the repeal shall have effect only in so far as the said Act relates to the sanctioning of cinematograph films for exhibition.

Note

The wording of section 18 shows that the repeal of the Cinematograph Act, 1918 is confined to that portion of the old Act which is covered by Part II of the new Act. Section 6 is one of the repealed sections, but the issuing of the licences and the procedure provided therefore cannot be said to come within the wording of the repealing section. *Bharat Bhushan v. p. C. Saxena*, AIR 1955 All 82.

